

INSTRUCTION NO. 1

GENERAL INSTRUCTIONS

MEMBERS OF THE JURY:

Now that you have heard the evidence and the arguments, it becomes my duty to give you the instructions of the court as to the law applicable to this case.

It is your duty as jurors to follow the law as stated in the instructions of the court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

Counsel may refer to these instructions in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the court in these instructions, you are of course to be governed by the court's instructions.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions of the court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the court.

INSTRUCTION NO. 2

You are to perform your duty as jurors without bias or prejudice as to any party. Our system of law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict, regardless of the consequences.

INSTRUCTION NO. 3

Nothing said in these instructions and nothing in the verdict form prepared for your convenience is meant to suggest in any way what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

INSTRUCTION NO. 4

The evidence in this case consists of the sworn testimony of the witnesses, the exhibits received in evidence, the facts which may have been admitted or stipulated, and any facts judicially noticed by the court.

Statements and arguments of counsel are not evidence. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

Any evidence to which an objection was made and sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

Anything you may have seen or heard outside of this courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the statements of the witnesses. On the contrary, you are permitted to draw from the facts which you find have been proved such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion which reason and common sense would lead you to draw from facts which are established by the evidence in the case.

You should weigh all of the evidence in the case, affording each piece of evidence the weight or significance that you find it reasonably deserves.

INSTRUCTION NO. 5

There are two types of evidence from which you may find the truth as to the facts of a case -- direct evidence and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts or circumstances indicating the existence or the nonexistence of a particular fact, or the occurrence or nonoccurrence of a particular event. There is no difference between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case, giving each piece of evidence the weight or significance that you find it reasonably deserves.

INSTRUCTION NO. 6

A stipulation is an agreed statement of facts between the attorneys on both sides, and you should regard any stipulated facts as undisputed evidence.

INSTRUCTION NO. 7

During the trial of this case, certain testimony has been presented to you by way of deposition, consisting of sworn recorded answers to questions asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented by reading the deposition of the witness to you. Such testimony is entitled to the same consideration, and is to be judged as to credibility, and weighed, and otherwise considered by the jury, insofar as possible, in the same way as if the witness had been present and had testified from the stand.

INSTRUCTION NO. 8

You are the exclusive judges of the credibility of the witnesses and the weight of the evidence. In judging the weight of the testimony and credibility of the witnesses you have a right to consider their bias, their interest in the result of the suit, or any probable motive or lack thereof to testify fairly, if any is shown. You may consider the witnesses' conduct upon the witness stand, the reasonableness of their statements, their apparent frankness or candor, or the lack of it, their opportunity to know, their ability to understand, and their capacity to remember. You should consider these matters together with all of the other facts and circumstances which you may believe have a bearing on the truthfulness or accuracy of the witnesses' statements.

If any reference by the court or by the attorneys to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

INSTRUCTION NO. 9

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who, by education, study, experience, skill, knowledge, and training in a particular art, science, profession, or occupation, may give his or her opinion as an expert witness regarding such matters if they are relevant to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you feel it is entitled, or you may reject it in whole or in part if, in your judgment, the reasons given for the opinion are unsound.

INSTRUCTION NO. 10

If you find that a conflict exists in the testimony of the expert witnesses, you must resolve that conflict by weighing the various opinions and reasons for such opinions given by each of the experts, as well as the relative credibility and knowledge of the experts who have testified.

INSTRUCTION NO. 11

The burden of proof on a party in a civil action is to prove every essential element of its claim by a "preponderance of the evidence." A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a "preponderance of the evidence" means to prove that the claim is more likely so than not so. Accordingly, in answering any question asked on the Special Verdict form, if you find that the party's claim is more likely true than not true, you should answer that question with a "Yes." If, however, the evidence appears to be equally balanced or in favor of the other party's position with respect to any question asked on the Special Verdict form, then you must answer that question with a "No."

In determining whether any fact in issue has been proved by a preponderance of the evidence, the jury may consider the testimony of all the witnesses, regardless of who may have called them, and all the exhibits received in evidence, regardless of who may have produced them. If the evidence should fail to establish any essential element of a party's claim by a preponderance of the evidence, the jury should find for the other party as to that claim.

The preponderance of the evidence is not determined simply by the number of witnesses or the amount of the testimony, but by the convincing character of the testimony weighed by the impartial minds of the jury.

[Insert specific instructions on this case]

INSTRUCTION NO. 12

The burden is upon the plaintiff to prove by a preponderance of the evidence the amount of damages reasonably and naturally flowing from the incident. However, the plaintiff is not required to prove its damages with precision.

The plaintiff is not entitled to recover for any claimed damage which is of a speculative nature. If the plaintiff has failed to prove any claimed element of damage by a preponderance of the evidence, or if the evidence respecting such matters is evenly balanced, you must resolve such issue against the plaintiff.

INSTRUCTION NO. 13

The fact that the court has instructed you concerning damages is not to be taken as any indication that the court either believes or does not believe that a party is entitled to recover damages. The instructions about damages are given as a guide in case you find from a preponderance of the evidence that a party is entitled to recover.

INSTRUCTION NO. 14

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 15

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

You will take the verdict form to the jury room, and when you have reached unanimous agreement as to each question, you will have your foreperson fill in the answers. When all of the appropriate questions have been answered, you will have the foreperson date and sign the form and then return with your verdict to the courtroom.

INSTRUCTION NO. 16

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his or her sense of pride may be aroused, and he or she may hesitate to recede from an announced position if shown that it is wrong.

INSTRUCTION NO. 17

If it becomes necessary during your deliberations to communicate with the court, you may send a note by a marshal, signed by your foreperson or by one or more jurors. No member of the jury should attempt to communicate with the court by any means other than a signed writing; and the court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing or orally here in open court.

You will note from the oath the marshal will take that he or she, as well as any other person, is also forbidden to communicate in any way with any juror about any subject touching the merits of the case.

Bear in mind also that you are not to reveal to any person -- not even to the court -- how the jury stands numerically or otherwise until you have reached a unanimous verdict.